



## Evolution of criminal justice system in ancient India

Dr. Rahul Tripathi

Associate Professor, Amity University Rajasthan, Jaipur, Rajasthan, India

### Abstract

Like in every civilized society, in India too, a criminal justice system evolved. Socio-economic and political conditions prevailing during different phases of the history of India influenced its evolution. Accordingly, the objectives of the criminal justice and methods of its administration changed from time to time and from one period of history to another. To suit the changing circumstances the rulers introduced new methods and techniques to enforce law and administer justice. The paper highlights the evolution of Criminal Justice system especially in Ancient India.

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### Introduction

In early society the victim had himself (as there was no State or other authority) to punish the offender through retaliatory and revengeful methods; this was, naturally, governed by chance and personal passion<sup>[1]</sup>. Even in the advanced *Rig-Vedic* period there is a mention that punishment of a thief rested with the very person wronged. Gradually, individual revenge gave way to group revenge as the man could not have grown and survived in complete isolation and for his very survival and existence it was necessary to live in groups. Group life necessitated consensus on ideals and the formulation of rules of behavior to be followed by its members. These rules defined the appropriate behavior and the action that was to be taken when members did not obey the rules. This code of conduct, which governed the affairs of the people, came to be known as *Dharma* or law.

### Emergence of Criminal Law

In course of progress man felt that it was more convenient to live in society rather than in small groups. Organizations based upon the principle of blood relationship yielded, to some extent, to larger associations—the societies. In the very early period of the Indian civilization great importance was attached to *Dharma*. Everyone was acting according to *Dharma* and there was no necessity of any authority to compel obedience to the law<sup>[2]</sup>. The society was free from the evils arising from selfishness and exploitation by the individual. Each member of the society scrupulously respected the rights of his fellow members and infraction of such rights rarely or never took place. The following verse indicates the existence of such an ideal society.

*“There was neither kingdom nor the King; neither punishment nor the guilty to be punished.*

*People were acting according to Dharma; and thereby protecting one another<sup>[3]</sup>.”*

However, the ideal stateless society did not last long. While the faith in the efficacy and utility of *Dharma*, belief in God

and the God fearing attitude of people continued to dominate the society, the actual state of affairs gradually deteriorated. A situation arose when some persons began to exploit and torment the weaker sections of society for their selfish ends. Tyranny of the strong over the weak reigned unabated. This situation forced the law abiding people to search for a remedy. This resulted in the discovery of the institution of King and establishment of his authority over the society, which came to be known as the State. As the very purpose of establishing the State and the authority of the King was the protection of person and property of the people, the King organized a system to enforce the law and punish those who violated it. This system later came to be known as “criminal justice system”. Although the Indus-valley civilization suggests that an organized society existed during pre-*Vedic* period in India, traces of the criminal justice system can only be found during the *Vedic* period when well defined laws had come into existence. The oldest literature available to explain the code of conduct of the people and the rules to be followed by the King are *Vedas*. Therefore, while discussing the evolution of the criminal justice system the history of India is covered from the *Vedic* period onwards dividing it into three periods—Ancient India (1000 B.C. to A.D. 1000), Medieval India (A.D. 1000 to 1757) and Modern India (A.D. 1757 to 1947).

### Ancient India (C. 1000 B.C. To A.D. 1000)

This period of Indian history is also known as Hindu period because of the prevalence and dominance of Hindu law. The elements of state administration signifying rule by a King with the help of his advisers or assistants may be traced back to the early *Vedic* period. In the *Rig-Veda* the King is called *Gopa janasya* or protector of the people. This implies that he was charged with the maintenance of law and order. According to the *Dharma sutras* and the *Arthashastra*, it was the duty of the King to ensure the security and welfare of his subjects.

Each state was divided into provinces and the provinces into divisions and districts. For each province, governors were

appointed. District officers were entrusted with the judicial and administrative functions. According to Kautilya's *Arthashastra*, the administration of towns was entrusted to the *Nagarka*. He had not only to look after the maintenance of law and order but had also to enforce various building and sanitary regulations and to prepare census of the citizens. Apart from cities and towns, there were a large number of villages. In fact, the village was the basic unit of government. Each village consisted of a village headman and Village Council or *Panchayat*. The office of the village headman was mostly hereditary. In villages he represented the King's administration<sup>[4]</sup>. The most remarkable feature of the early *Vedic* polity was the institution of popular assemblies, of which two, namely, the *Sabha* and *Samiti* deserve special mention. In the later *Vedic* period, the *Samiti* disappeared as popular assembly while the *Sabha* became a narrow body corresponding to the King's Privy Council. The beginning of a regular system of state judicial administration may be traced to the pre-Mauryan age. The Mauryan period (c. 326-185 B.C.) fills a gap between two great epochs of administration of criminal justice in ancient India, namely, that as mentioned in the *Dharma sutra* on the one hand and that of Manu's code on the other.

The few references in Megasthenes' *Indica* to the penalties for offences current in Chandragupta's time breathe the spirit of the penal law of the preceding period. From Pillar Edict IV of Ashoka, we learn that even after his conversion to Buddhism he continued the death penalty for crimes, only softening its rigour by giving the convicts three days' respite before execution. The system of justice of the preceding period appears to have been continued by the Mauryas. The old division of urban and rural judiciary was continued in Ashoka's reign. The few references in the records of Mauryas point to the continuance of the state police of the preceding period. The jail administration of the earlier times appears to have been continued. The rule of the foreign dynasties of the pre-Gupta period is an important episode in the history of ancient Indian administration. Some of the Indo-Greek Kings organized their Indian dominions under provincial governors bearing Greek titles. The Kushanas (c. A.D. 120-220) brought with them an exalted conception of monarchy. They introduced two new grades of military or judicial officers, *Mahadandanayaks* and *Dandanayaks*, to make the justice system more effective. The Guptas (c. A.D. 320-550) created afresh a system of administration on imperial lines after the downfall of the Mauryan empire. The civil administration apparently was in the charge of the *Mantri* as before. In the branch of provincial administration the Guptas adopted the older models with changed official nomenclature and some striking innovations. The Municipal Board consisted of four members, namely, the Guild-President, the Chief Merchant, the Chief Artisan and the Chief Scribe. This marks a bold attempt to associate popular representatives with local administration.

After the Guptas, in Northern India, King Harshvardhana (A.D. 606-47) created a sound and efficient administration. The contemporary Chinese Buddhist pilgrim Hiuen Tsang gives high praise to Harshvardhana for his love of justice, his unremitting industry in the discharge of his duties and his piety and popularity. However, on the other hand, the penal

law was marked by a certain degree of harshness in strong contrast to exceptional mildness under the Imperial Guptas. In the Deccan, the administration of the Imperial Chalukyas of Vatapi (A.D.540-753) was marked by the usual characteristics. The administration of Rajput states of Northern India was of the bureaucratic type. Salient features of the criminal justice system as evolved and prevailed during ancient India are described below.

### Concept of Dharma (Law)

The Hindu legal system was embedded in *Dharma* as propounded in the *Vedas*, *Puranas*, *Smritis* and other works on the topic. *Dharma*, i.e. law, constituted the blue print or master-plan for all round development of the individual and different sections of the society. The following verse describes the importance of the *Dharma* (law):

*"Those who destroy Dharma get destroyed. Dharma protects those who protect it. Therefore Dharma should not be destroyed."*

The law was recognized as a mighty instrument necessary for the protection of the individual's rights and liberties. Whenever the right or liberty of an individual was encroached upon by another, the injured individual could seek the protection of the law with the assistance of the King, howsoever powerful the opponent might be. The power of the King to enforce the law or to punish the wrong doer was recognized as the force (sanction) behind the law, which could compel implicit obedience to the law.

### Sources of Dharma

The *Veda* was the first source of *Dharma* in ancient India. The *Dharma sutras*, *Smritis* and *Puranas* were the other important sources. Subsequently the *Mimamsa* (art of interpretation) and the *Nibandhas* (commentaries and digest) also became supplementary sources of law. Whenever there was conflict between *Vedas*, *Smritis* and *Puranas*, what was stated in the *Vedas* was to be taken as authority<sup>[5]</sup>. The source of the *Vedas* was believed to be divine<sup>[6]</sup>. The *Vedas* are four in number, viz. the *Rig Veda*, the *Yajur Veda*, the *Sam Veda* and the *Atharva Veda*. As per Wilkins, among the *Vedas*, the *Rig-Veda* is the oldest, next in order was the *Yajur-Veda*, then the *Sama-Veda* and last of all the *Atharva-Veda*. Max- Muller gives the probable date of the *mantras*, or hymn portion of the *Vedas*, from 1200 to 800 B.C., and the *Brahmanas* from 800 to 600 B.C, and the rest from 600 to 200 B.C. Each of the *Vedas* consists of two main parts: a *Samhita*, or collection of *mantras* or hymns; and a *Brahmana*, containing ritualistic precept and illustration. Attached to each *Brahmana* is an *Upanishad* containing secret or mystical doctrine.

The *Dharmashastras* laid down the law or rules of conduct regulating the entire gamut of human activity. This necessarily included civil and criminal law. The earlier works, which laid down the law in the form of *sutras*, were divided into three classes, viz. *Srauta sutras*, *Grihya sutras* and *Dharma sutras*. The *Dharma sutras* dealt with civil and criminal law. The important *Dharma sutras*, which were considered as high authority, were of Gautama, Baudhayana, Apastamba, Harita, Vasista and Vishnu. These *Dharma sutras*, therefore, can be regarded as the earliest works on Hindu legal system<sup>[7]</sup>.

The next important source of the Hindu law was the *Smritis*.

The compilation of the *Smritis* resembles the modern method of codification. All the legal principles scattered in the *Vedas* and also those included in the *Dharma sutras* as well as the custom or usage which came to be practised and accepted by the society were collected together and arranged subject wise in the *Smritis*. The *Smritis* dealt with constitution and gradation of courts, appointment of judges, the procedural law for the enforcement of substantive law, etc. They disclose a well developed legal and judicial system. The important *Smritis* are the *Manu Smriti*, the *Yajnavalkya Smriti*, the *Narada Smriti*, the *Parashara Smriti* and the *Katyayana Smriti*.

The eighteen sub-divisions of law, which cover civil as well as criminal law, are the special features of the *Manu Smriti*. All the law writers, from the 2<sup>nd</sup> Century A.D. onwards, appear to have attached great importance to the *Manu Smriti* and it came to be recognized as the most authoritative work. However, in a research it has been found that out of 2685 verses (*shlokas*) in the *Manu Smriti* only 1214 verses are original and remaining 1471 verses are interpolated. The researcher has described how the interpolated verses of the *Manu Smriti* either contravene the views of *Manu* as expressed in other verses or are irrelevant to the subject matter where they are placed.

*Puranas* were also a source of law in ancient India. Each *Purana* is devoted to the praise of some special deity, who, according to its teaching, is supreme. The deities, described in other *Puranas* in equally extravagant language, are slighted, and in some case their worship forbidden. It seems to prove that these books must have been written at different times and in different places, and probably by those who were ignorant of what others had written. All the 18 *Puranas* are classified into three categories—(i) those which are devoted to Brahma viz. the *Brahma*, the *Brahmanda*, the *Brahmavaivarta*, the *Markandey*, the *Bhavishya*, and the *Vaman*; (ii) those devoted to Vishnu viz. the *Vishnu*, the *Bhagavata*, the *Naradiya*, the *Garuda*, the *Padma*, and the *Varaha*; and (iii) those devoted to Siva, viz. the *Siva*, the *Linga*, the *Skanda*, the *Agni*, the *Matsya*, the *Kurma*.

Kautilya's *Arthashastra* was considered to be another important and authoritative source of law during ancient India from the Mauryan period onwards. Kautilya, also known as Vishnugupta or Chanakya, was a Minister of Chandragupta Maurya (c. 322-298 B.C.). He has given a detailed description of the legal system. According to Kautilya, an essential duty of government is maintaining order. He defines this broadly to include both maintenance of social order as well as order in the sense of preventing and punishing criminal activity. Kautilya has mentioned the law of procedures; the law of evidence in civil as well as criminal cases; procedure of criminal investigation; and quantum and method of punishments for various types of offences. Prisons, lockups and welfare of prisoners are also the subject matters of the *Arthashastra*. Kautilya has prescribed code of conduct for Judges and for the King. However, some of the provisions in the *Arthashastra* relating to punishments have also been found to be interpolations.

However, the above position changed with passage of time as it came to be recognized that in case of conflict between the law laid down in the *Shrutis (Vedas)* or the *Smritis* and the *Dharmanyaya*, i.e. King's law, the latter prevailed.

In addition to the literary works of the Hindu law, the customs and usages were also considered as law to administer justice. The *Gautama sutra* declared: "Administration of justice shall be regulated by the *Vedas*, the institutes of the sacred law; the *Vedangas* and the *Puranas*. The customs of the countries, castes and the family which are not opposed to sacred laws have also the authority." The *Katyayana Smriti* also provided that in the absence of a provision in the texts, a King should follow the usage. The *Yajnavalkya Smriti* prescribed that where two *Smritis* conflicted, principles of equity as determined by popular usages should prevail. The *Narada Smriti* mentioned: "When it is impossible to act up to the precept of sacred law, it becomes necessary to adopt a method on reasoning because custom decides everything and overrules the sacred law." From these provisions in the *Smritis* it is inferred that a practice had evolved to recognize the prevailing customs and local usage as authority during ancient India. As time elapsed the customs and usage had not only become the laws but also achieved superiority over the sacred law as found in the *Vedas*.

As regards the residuary matters, the power was vested with the King. It was provided that in cases where no principle of law was found in the *Shrutis*, *Smritis* or custom, the King should decide according to his conscience. As acknowledged by the *Smritis* themselves, they were based partly on usage, partly on regulations made by the rulers and partly on decisions arrived at as a result of experience.

### King and Courts

Administration of justice, according to the *Smritis*, was one of the most important functions of the King. The *Smritis* stressed that the very object with which the institution of kingship was conceived and brought into existence was for the enforcement of *Dharma* (law) by the use of might of the King and also to punish individuals for contravention of *Dharma* and to give protection and relief to those who were subjected to injury. The *Smritis* greatly emphasized that it was the responsibility of the King to protect the people through proper and impartial administration of justice and that alone could bring peace and prosperity to the King himself and to the people as well. The King's Court was the highest court of appeal as well as an original

Court in cases of vital importance to the State. In the King's Court, the King was advised by the Chief Justice and other judges, Ministers and elders, and representatives of trading community. Next to the King's Court was the Court of Chief Justice, which consisted of a board of Judges to assist him. In towns and districts the courts were presided over by the State officers, under the

Authority of the King, to administer justice. Ashoka entrusted *Mahamatras* with the task of invigilation of the town judiciary by means of periodical tours.

### Judicial System in Villages

The criminal justice system of ancient India was so organized that every villager had easy and convenient access to a judicial forum. In Vedic society the village *Samitis* and *Sabhas* were two important instruments of Indian polity. The Village Councils, similar to modern *Panchayats*, consisted of a board of five or more members to dispense justice to villagers. The

administration of justice was largely the work of these village assemblies or other popular or communal bodies. Village headman had the authority to levy fines on offenders. There were several village committees, including a justice committee, appointed by people's vote. Village Council dealt with simple civil and criminal cases. Other criminal cases were presented before the central court or the courts in towns and district headquarters presided over by the government officers under the Royal authority to administer justice.

### Police

The first institution of state police may be traced to the pre-Mauryan period. Its full development is recorded in Kautilya's *Arthashastra*. It mentions that the police during ancient India was divided in two wings, namely, the regular police and the secret police. The regular police consisted of three tiers of officials: the *Pradesta* (rural) or the *Nagaraka* (urban) at the top, the rural and urban *Sthanikas* in the middle and the rural and urban *Gopas* at the bottom. In the course of his description of the *Pradesta's* duties, Kautilya tells how an inquest was held in case of sudden death. This involved a post-mortem examination of the body as well as thorough police investigation. In Kautilya's work the secret police is divided into two categories namely, the peripatetic and the stationary. The *Manu Smriti* prescribed instructions for the King to detect offences with the help of soldiers and spies. The *Katyayana Smriti* mentions of informant and investigating officer. This suggests that an agency like modern police existed during that period to assist the King in administration of justice.

### Jails

Like the institution of the state police, that of the state jail also begins with the pre-Mauryan period. It was provided that a jail should be constructed in the capital providing separate accommodation for men and women and it should be guarded. It was also prescribed that the prisoners should be employed in useful work. The policy of taking a sympathetic view, as regards persons found guilty of offences and punished with imprisonment imposed on them, was also laid down in the ancient Indian law. The *Dharmamahamtras* were charged with the duty of protecting prisoners from molestation and releasing the deserving ones. The *Arthashastra* gives a detailed account of jail administration.

### Crime and Investigation

Violation of criminal laws was considered an offence against the State. Any member of the public could bring the violation to the notice of the King and the King was under a duty to apprehend and punish the offender. It was provided that the King should take cognizance on his own, with or without any complaint by a private party, of criminal offences.

The information or complaint about the offence committed by any individual could be made by any citizen and not necessarily by the person injured or his relatives. The person, who on his own accord detected commission of offences and reported to the King, was known as *stobhaka*, i.e. informant. He was entitled to remuneration from the King for giving first information. A person who was appointed by the King to detect commission of offences was called *Suchaka*, i.e.

Investigation Officer. The special responsibility of the King in the matter of controlling crimes, detection of crimes and punishing the offenders was stressed in the *Manu Smriti* that contained the following guidelines for the King:

- Persons who commit offences or who conspire to commit offences are generally found in assembly houses, hotels, brothels, gambling houses, etc.;
- The King must post soldiers and spies for patrolling such places and in order to keep away thieves and antisocial elements; and
- He should appoint reformed thieves who were formerly associate with such doubtful elements and through them offenders must be detected and punished.

### Punishments

The *dandaniti*, i.e. punishment policy, is one of the elaborately dwelt upon subjects in ancient India as it was intimately connected with the administration of the State. Manu emphasized the importance and utility of punishment saying: "Punishment alone governs all created beings, it protects them and it watches over them while they are asleep." As per Manu, Yajnavalkya and Brihaspati there were four kinds or methods of punishment during ancient India, namely, admonition, censure, fine and corporal punishment. Corporal punishments included death penalty, cutting off the limb with which the offence was committed, branding on the head some mark indicating the offence committed, shaving the head of the offender and parading him in public streets. The nature and types of punishments were very cruel, inhuman and barbarous. The *Manu Smriti* and some other *Smritis* describe that the punishment was awarded according to the *Varna* of the offender as well as of the victim. For example, the *Gautam Smriti*, the *Manu Smriti* and the *Yajnavalkya Smriti* prescribed that a *Kshatriya* or a *Vaisya* abusing or defaming a *Brahmana* was to be punished respectively with a fine of 100 panas and 150 panas while a *Sudra* was punished by corporal punishment. This shows that lower the *Varna* of the offender the more severe the punishment. But, the *Katyayana Smriti* provided that if a *Kshatriya* was guilty of an offence the quantum of penalty imposed on him would be twice of the penalty imposed on a *Sudra* for the similar offence. The *Manu Smriti* has also a similar provision which provides that higher the *varna* of the offender greater the punishment. This indicates that there were contradictory provisions regarding punishment in different *Smritis*.

### Examination of Witnesses and Perjury

It was prescribed that the examination of witnesses should not be delayed. A serious defect, namely, miscarriage of justice, would result owing to delay in examination of witnesses. Witnesses were under legal compulsion to give evidence before the court. Failure to appear before the court entailed heavy penalty. Failure to give evidence amounted to giving false evidence. Perjury, i.e. the act of giving false evidence, was considered a serious offence and punishment was prescribed for it. The entire wealth of a person, who cited false witnesses out of greed, would be confiscated by the King, and in addition he would be exterminated. The party whose witnesses deposed against him could examine further and better witnesses to prove his case as well as to prove that the

witnesses examined earlier were guilty of perjury.

### **Peoples' Participation in Crime Prevention**

Failure of duty towards society was taken very seriously. Any person who fails to render assistance according to his ability in the prevention of crime would be banished with his goods and chattel. Any owner of a house failing to help another at the time of outbreak of fire was liable to be fined. Double punishment was prescribed for those who failed to give assistance to one calling for help though they happened to be on the spot or who ran away after being approached for help.

### **Right of Self-defence**

Right of self-defence existed during ancient India. The law provided: "A person can slay without hesitation an assassin who approaches him with murderous intent. By killing an assassin the slayer commits no offence. A person has a right to oppose and kill another not only in self-defence but also in defence of women and weak persons who are not in a position to defend themselves against murderous or violent attack. Even killing a *Brahmana* in exercise of such a right is no offence."

### **Conclusion**

Besides this, Offences and misconduct committed by police officers, Jail Superintendent and other public servants were taken very seriously and severe punishments were prescribed. It was provided that the judges who passed unjust order, or took bribes, or betrayed the confidence reposed in them, should be banished.

From the foregoing, it is seen that the institutions of the criminal justice administration had taken their roots during the *Vedic* period in India. The system gradually developed and during the Mauryan period a well-defined criminal justice system had come into existence as described in the *Arthashastra*.

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